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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

HARMONI INTERNATIONAL
SPICE, INC., a California
corporation, and ZHENGZHOU
HARMONI SPICE CO., LTD., a
corporation,

Plaintiffs,

vs.

WENXUAN BAI, an individual, et
al.,

Defendants.

Case No.: 2:16-cv-00614-BRO-(ASx)

**DECLARATION OF LAWRENCE E.
HELLER FILED IN OPPOSITION TO
PLAINTIFFS' EX PARTE
APPLICATION TO CONSOLIDATE
THE HEARING DATES ON
DEFENDANTS' MOTIONS TO
DISMISS THE FIRST AMENDED
COMPLAINT AND THEIR ANTI-
SLAPP MOTION WITH
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

Ex-Parte Date: March 21, 2016

Action Filed: January 27, 2016

Trial Date: None Set

I, LAWRENCE E. HELLER, declare as follows,

1. I am a principal of the law firm of Heller & Edwards, attorneys of record for Defendants herein, C Agriculture, a New York corporation that distributes garlic domestically, Jin Xia Wen, C Agriculture's owner and Mingju Xu, its manager (collectively "Opposing Defendants"). I have personal knowledge of the matters set forth herein and am competent and available to personally testify thereto.

2. The sole basis for Opposing Defendants' inclusion in this lawsuit is a demand letter that Opposing Defendant, C Agriculture's attorney sent to the

1 Plaintiffs, and an entity called Christopher Ranch, LLC, on November 18, 2015
2 (“the Letter”). A reading of the Letter, a true and correct copy of which is attached
3 and incorporate as Exhibit “A” to this declaration (it has not been attached to the
4 First Amended Complaint filed by Plaintiffs), evidences that it is no more than a
5 typical attorney demand letter, written as a precursor, and to avoid, the filing of a
6 lawsuit. Although Plaintiffs characterize the letter as “extortion,” it is anything but.

7 3. Indeed, if the Letter were to be construed “extortive,” as claimed by
8 Plaintiffs in their First Amended Complaint, virtually every litigation attorney in this
9 country would have at one time or another engaged in such “extortion.” The Letter,
10 like countless others of its ilk, simply asserts that Plaintiffs have engaged in
11 wrongful conduct, in this instance, “dumping” activities, and have utilized prison
12 labor to process (clean and peel) garlic, which the plaintiffs then imported into the
13 United States. The Letter cites to Plaintiffs’ purported violations of Section 4 of the
14 Clayton Act which, the Letter goes on to note, authorizes a private action if the Act
15 is violated to the detriment of a plaintiff. The Letter then monetarily itemizes the
16 damages that Opposing Defendants have suffered as a result of Plaintiffs’ wrongful
17 activities, and threatens that the lawyer writing the Letter has been authorized by
18 Opposing Defendants to file a lawsuit under the auspices of the Clayton Act, unless
19 the monetary demand articulated in the Letter is met. That’s it!

20 4. The Letter is devoid of any threats to go to any prosecutorial agency, or
21 to make private facts public, or anything of the kind. Based on the privileged nature
22 of the Letter, Opposing Defendants, who are hereby opposing Plaintiffs’ Ex-Parte
23 Application, are quite obviously, under the circumstances, anxious to be relieved of
24 having to defend this lawsuit.

25 5. Plaintiffs filed their First Amended Complaint on March 4, 2016,
26 shortly after Opposing Defendants filed their motion to dismiss Plaintiffs’ original
27 complaint [Docket # 24]. Opposing Defendants’ response to the First Amended
28 Complaint was therefore due on or before March 21, 2016. Accordingly, Opposing
Defendants filed both their resubmitted Motion to Dismiss [Docket # 37], and their
new Anti-SLAPP Motion, being made pursuant to *Cal. Code of Civil Procedure*, §

1 425.16 [Docket # 39], on March 18, 2016, and noticed the hearing date thereon for
2 April 18, 2016. Opposing Defendants believed it was most efficient to have both
3 Motions heard at the same time since at least one of the primary issues, the
4 California litigation privilege, is paramount to the determination of both motions.

5 6. *Cal. Code of Civil Procedure*, § 425.16(f) provides that “(T)he (anti-
6 SLAPP) motion shall be scheduled by the clerk of the court for a hearing not more
7 than 30 days after the service of the motion unless the docket conditions of the court
8 require a later hearing.” In that this Court only hears law and motions matters on
9 Mondays, and given that the last filing date for the Motion to Dismiss the First
10 Amended Complaint was March 21, 2016, the latest date on which to set the hearing
11 on Opposing Defendants’ anti-SLAPP Motion was April 18, 2016.

12 7. It is true that Plaintiffs offered to waive the 30 day hearing deadline,
13 citing to *Decambre v. Rady Children’s Hospital-San Diego*, 235 Cal.App.4th 1, 12
14 n.6 (2015) for the authority that they could do so. However, having read footnote 6
15 of that case I disagree that it holds that a plaintiff can waive the 30 day hearing
16 deadline, as I told Plaintiffs’ attorney John Schreiber in my March 17, 2016 email
17 (Exhibit “A” to Schreiber declaration), where I made it clear that I was not going to
18 take the chance of prejudicing my clients by waiving Opposing Defendants’ right to
19 have their anti-SLAPP motion heard due to an untimely scheduled hearing date.

20 8. I further noted to Plaintiffs’ attorney, and confirm herein, that it would
21 in fact be more efficient to have Opposing Defendants’ two motions heard prior to
22 the hearing on Plaintiffs’ Motion for Preliminary Injunction, currently set for May 9,
23 2016, because:

24 (1) if the Court grants Defendants’ anti-SLAPP motion (or if the Court
25 grants Opposing Defendants’ concurrently filed Motion to Dismiss
26 without leave to amend) it will obviate the necessity of this court working
27 up Plaintiffs’ motion, and having a hearing on Plaintiffs’ Motion for
28 Preliminary Injunction, which is predicated, at least as to Opposing
Defendants, solely on the assumption that the litigation privilege does
not apply to the Letter at issue;

1 (2) the issues inherent to the Opposing Defendants' two motions are legal
2 issues based on allegations in the First Amended Complaint regarding
3 Opposing Defendants' single "misconduct," which irrefutably occurred
4 on November 18, 2015, when their Letter was transmitted, whereas the
5 primary issues before the Court on Plaintiffs' Preliminary Injunction
6 Motion are predicated on additional factual finding as to whether
7 Plaintiffs sustained irreparable harm, as a result of the Letter, so that an
8 order enjoining future statements by the Opposing Defendants is
9 warranted and legally permissible; and

10 (3) putting all of these motions, as well as co-defendants' motions to
11 dismiss, which were also filed last Friday, on the same day might tax the
12 court's resources.

13 9. I accordingly believe that it would be most efficient to first hear
14 Opposing Defendants' motions, before the Court hears Plaintiffs' preliminary
15 injunction motion, not at the same time. Different opinions regarding the court's
16 and the parties' expedience aside, it was, and still is, my belief that Opposing
17 Defendants' anti-SLAPP motion has to be heard within 30 days of its filing date.

18 10. As this court notes in its Standing Order "ex parte applications are
19 solely for extraordinary relief and are rarely granted. See, *Mission Power*
20 *Engineering Co. v. Continental Casualty Co.*, 883 F. Supp. 488 (C.D. Cal. 1995)."
21 Yet this is the second ex parte application filed by the Plaintiffs within a two week
22 period, in a case that is barely two months old. Plaintiffs' attorneys Los Angeles
23 office has over 70 attorneys, and their New York offices they have an additional 200
24 plus attorneys (Plaintiffs' caption lists four attorneys assigned to this case alone),
25 whereas I am a partner in a two person law firm, who is being assisted in this case
26 by only one associate. It also bears mention that although Plaintiffs' counsel
27 claims to have scheduled the May 9th hearing date on Plaintiffs' Motion for a
28 Preliminary Injunction to accommodate by vacation schedule, Opposing Defendants
must file their opposition to the preliminary injunction motion on April 18, 2016, the
day I return from an overseas trip. Therefore, as Plaintiffs' counsel is well aware,

1 the opposing brief will have to be prepared while I am on vacation. Hardly an
2 accommodation.

3 11. As to Plaintiffs' counsel hardship claim, it bears notice that Plaintiffs,
4 in essence, have had access to Opposing Defendants' memorandum supporting their
5 initial Motion to Dismiss Plaintiffs' original complaint since March 4, 2016 (e.g. for
6 almost three weeks). The original Motion to Dismiss is virtually identical to
7 Opposing Defendants' recently filed Motion to Dismiss the First Amended
8 Complaint, and the legal arguments raised in both motion are the same.

9 12. Although over the course of over 40 years of practice I have always
10 strived to provide opposing counsel with every conceivable professional courtesy, in
11 this instance I believe that setting a hearing on Opposing Defendants' anti-SLAPP
12 motion more than 30 days after the motion was filed might very well be fatal to that
13 motion and highly prejudicial to my clients' interests. Moreover, I believe that the
14 inconvenience, or purported "hardship" to Plaintiffs' counsel, if any, is more than
15 outweighed by the Court's inconvenience in having a hearing on a substantial
16 number of motions on a single day.

17 I declare under penalty of perjury under the laws of the United States that the
18 foregoing is true and correct.

19 Executed this 21st day of March, 2016, in Beverly Hills, California.

20 /s/: Lawrence E. Heller
21 Lawrence E. Heller, declarant
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